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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,521	11/03/2003	Jacques Habatjou	233773US26	1399
22850	7590	03/10/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
DOAN, ROBYN KIEU				
ART UNIT		PAPER NUMBER		
3732				
NOTIFICATION DATE		DELIVERY MODE		
03/10/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/698,521

Applicant(s)

HABATJOU, JACQUES

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31, 33, 34, 37, 38 and 59-68 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 16, 18-31, 33, 34, 37, 38 and 59-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 7-11, 15, 16, 18-20, 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Bocola (US. Pub. # 2005/0167388).

With regard to claims 1, 4, 7-11, 15, 16, 18-20, 65, Bocola discloses a case (2, fig. 3) comprising a base part (3a) holding a reserve of product, a lid (10) covering the base part, a sealing element (cover 20) arranging to close in a leak tight manner a space (3) containing the product, wherein the sealing is support by a pivot (at 25, 27) incorporating a ball joint (26) so that the sealing member being rotatable about at least two mutually perpendicular geometrical axes of rotation, wherein the pivot including the ball joint in a receptacle (4, see fig. 4) and wherein the receptacle being attached to the lid via arms (11, 13, fig. 4). The case further having a cup (3) supported by the base and containing the product, the cup having free edge (23) against which the sealing can bear (fig. 4), the sealing including a plate (20, fig. 1), the sealing member is attached to the lid (fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 5, 6, 21 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bocola.

With regard to claims 2, 3, 5, 6, 21 Bocola discloses the essential claimed invention except for the pivot having a resiliently deformable part, the cup being made of metal, the cup being glued onto the base part, the plate having variation thickness. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the pivot central portion having a resiliently deformable part, the cup being made of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. And it would also have been an obvious matter of design choice to glue the cup onto the base part, since such modification is well known in the art. In regard to claims 66-68, Bocola discloses all the claimed structures except for the pivot being a block of elastically deformable material that includes a transverse cross section that is at least twice or three times smaller than the transverse cross section of the sealing member. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the pivot being a block of elastically deformable material that

includes a transverse cross section that is at least twice or three times smaller than the transverse cross section of the sealing member, since it has been held to be within the general skill of a worker in the art to select a known material and particular sizes on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bocola in view of Dreschler et al (U.S. Pat. # 6,071,503).

With regard to claims 22 and 23, Bocola discloses a case comprising all the claimed limitations in claim 1 as discussed above except for the product being isododecane. Dreschler et al shows a cosmetic composition comprising isododecane (col. 30, line 30). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the isododecane solvent as taught by Dreschler et al into the cosmetic product of Bocola for the intended use purpose.

Claims 24-31, 33, 34, 37, 38, 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bocola in view of JP 63-129512 (IDS cited reference).

With regard to claims 24-31, 33, 37, 59-63, Bocola discloses the essential claimed invention except for the a base having a first compartment and a second compartment, wherein in closed position second compartment is not covered by the cover member. JP '512 discloses the cosmetic compact having a base (1) with a first compartment (at 2) containing a cosmetic product (6) and a second compartment (at 3) carrying an applicator (8), a lid (9) coupled to the base and movable to a closed lid

position in which the lid covers the base, a cover member (14) being movable from an open position, in which the first and second compartments being not covered by the cover member, to a closed position, in which the first compartment (2) being covered by the cover member and the second compartment is not covered by the cover member. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ two compartments with the particular cover as taught by JP '512 into the case of Bocola in order to conveniently store the cosmetic as well as the applicator. In regard to claims 34, 38, 64, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the material of the arms being flexible, the central portion having a deformable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goto et al is cited to show the state of the art with respect to a container having a cover with a pivot ball joint in the center of the cover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
February 28, 2008